

SUBCHAPTER IV

PROCEDURES

A. BASIC GUARDIANSHIP PROCEDURES

1. JURISDICTION AND VENUE

(1) [Note: From 880.02, 880.05, 55.06(3)(c)] Jurisdiction and venue.

(a) Jurisdiction. The circuit court shall have jurisdiction over all petitions for guardianship and protective placement. A guardianship of the estate of any person, once granted, shall extend to all of his or her estate in this state and shall exclude the jurisdiction of every other circuit court, except as provided in ch. 786.

(b) Venue. All petitions for guardianship and protective placement of residents of the state shall be directed to the circuit court of the county of residence of the person subject to guardianship or protective placement or of the county in which the person is physically present. A petition for guardianship of the person or estate of a nonresident may be directed to the circuit court of any county where the person or any property of the nonresident may be found.

(c) *Wards Moving Into State. The following procedures shall be applied in situations where a nonresident individual in need of a guardian is moving into the state of Wisconsin.*

1. A petitioner may file a petition to appoint a guardian for an individual who is not a resident of the state of Wisconsin if the petition alleges that the individual will be a resident of the State at the time of the final hearing. In such situation the petitioner shall notify the Probate Court having jurisdiction over the guardianship within 96 hours after the proposed ward is physically present in the state. If the Petition seeks a Temporary Guardianship, the proposed ward shall be required to be physically present within the state at the time of the hearing on appointment of the Temporary Guardian.

2. The Corporation Counsel of the County in which a Petition is filed under this subsection shall be an interested party and shall receive notice of the filing as otherwise provided by statute.

3. If the nonresident individual is subject to guardianship or similar court appointed procedure under the laws of the state from which the individual is

moving, such guardianship shall be recognized as valid in Wisconsin for a period for sixty days from the date that the individual becomes physically present in the state of Wisconsin so long as a Petition for Guardianship is filed in the State of Wisconsin.

NOTE: *The committee wanted to expand sec. 50.06, Stats., and change sec. 880.05, Stats., so that courts can accept petitions where petitioner alleges that the proposed ward is or will be in that county within 96 hours. The committee also wanted to require some kind of proof of arrival of the proposed ward in the county where the filing is made so that the court know it's time to start. The following additions to the statute were suggested, which the committee believes will accomplish their goal:*

- 1. THE COURT CAN ACCEPT PETITIONS WHERE PETITIONER ALLEGES THAT THE PROPOSED WARD WILL BE IN THAT COUNTY WITHIN 96 HOURS. WHEN PROPOSED WARD ARRIVES IN THE COUNTY, PETITIONER MUST GIVE COURT A LETTER CERTIFYING THE WARD'S ARRIVAL IN THE COUNTY BEFORE COURT WILL PROCEED WITH THE GUARDIANSHIP AND/OR PROTECTIVE PLACEMENT.**
- 2. THERE CAN BE RECIPROCITY IN WISCONSIN FOR A GUARDIANSHIP OR "GUARDIANSHIP EQUIVALENT" VALID IN ANOTHER STATE. THIS RECIPROCITY WOULD BE VALID FOR NO MORE THAN 60 DAYS FROM THE DATE OF THE PETITION FOR RECIPROCITY, AND THEN ONLY IF WISCONSIN PETITIONS FOR GUARDIANSHIP AND PROTECTIVE PLACEMENT WERE FILED NO LATER THAN THREE BUSINESS DAYS AFTER THE DATE OF PETITION FOR RECIPROCITY, WITH COPIES OF THE PETITIONS SENT TO THE FACILITY IN WHICH THE WARD IS PLACED. UNDER THESE CONDITIONS THE NURSING HOME MUST ACCEPT THE WARD.**
- 3. ADD THE PROCEDURES OUTLINED ELSEWHERE FOR DEALING WITH IMMEDIATE INVESTIGATION BY COUNTY PROTECTIVE SERVICES IF THE WARD OBJECTS TO THE PLACEMENT - 55.05(5)(C).**
- 4. CROSS REFERENCE TO CURRENT 880.295**

NOTE: *Jurisdictional issues are becoming more prevalent across the nation, and venue is not consistent between chs. 55 and 880. Currently, a guardianship can be filed in both the county of residence and where the proposed ward is physically present, whereas a protective placement can be filed only in the county of residence. In addition, it is difficult in some cases to admit an out-of-state nursing home resident (under guardianship) to a WI nursing home without a WI guardianship and protective placement, neither of which may be obtained until the ward is a WI resident or is physically present in WI. This is complicated by the fact that WI's protective placement provisions are unique.*

A recent Sauk County Circuit Court decision addressed the issue of disparate venue provisions in secs. 880.05 and 55.06(3)(c), Stats. In In re the Guardianship of H.K., Case No. 95GN, the court stated that language in sec. 55.06(4), Stats., "suggests that the venue

provision for guardianship takes precedence over the residence requirement of 55.06.” Since in this case guardianship and protective placement petitions were filed concurrently, the court decided that the proper venue was either the proposed ward’s county of residence or the county in which the proposed ward was physically present. Practically, then, for the bulk of guardianships, in which both guardianship and protective placement petitions are submitted, either venue can be appropriate. If this is true, the WI legislature should clarify this in a revision of the statutes. This proposed change makes that clarification.

(2) [From: 880.06] Change of venue.

(a) ORIGINAL PROCEEDING. The court wherein a petition is first filed shall determine venue. If it is determined that venue lies in another county, the court shall order the entire record certified to the proper court. A court wherein a subsequent petition is filed shall, upon being satisfied of an earlier filing in another court, summarily dismiss such petition..

(b) CHANGE OF RESIDENCE OF WARD OR GUARDIAN. If a ward removes from the county in which he or she has resided to another county within the state, venue may be transferred to the new county of residence as follows:

1. A Petition for Change of Venue shall be filed in the County in which venue for the guardianship originally lie.
2. Notice shall be given to the Corporation Counsels of the County of original venue and the proposed new venue and to the Register in Probate for the County of the proposed new venue.
3. If there is no objection within fifteen (15) days from the date notice is given, then an Order changing venue may be entered. If there is objection to the change of venue, then a hearing shall be set within seven (7) days and notice of such hearing shall be given to the Corporation Counsels of the two counties and to the Register in Probate for the proposed new venue.

2. LIABILITY FOR FEES

(1) [From: 880.33(2)(a)3.] If the person is indigent, the county having venue of the guardianship proceeding shall be the county liable for any fees due the guardian ad litem and, if counsel was not appointed under s. 977.08, for any legal fees due the person’s legal counsel. It shall be presumed that if a guardianship is imposed, the ward’s estate or income pays for the GAL, initial medical examination, petitioner’s attorney fees, advocate counsel and ward’s transportation if funds are available, unless otherwise ordered by the court.

NOTE: The committee wanted a statutory presumption that if a guardianship is imposed, the ward pays for the GAL, the initial medical examination, petitioner’s attorney fees,

advocate counsel and ward's transportation, unless otherwise ordered by the court.
880.33(2)(a)3. seemed an appropriate place to put this presumption.

3. PETITION

(1) **[From: 880.07] Petition.** Any relative, public official or other person, may petition for the appointment of a guardian of a person subject to guardianship. Such petition shall state, so far as may be known:

- (a) The name, date of birth, residence and post-office address of the proposed ward.
- (b) The nature of the proposed ward's incapacity with specification of the incompetency.
- (c) The approximate value of the proposed ward's property and a general description of its nature.
- (d) Any assets previously derived from or benefits now due and payable from the U.S. department of veterans affairs.
- (e) Any other claim, income, compensation, pension, insurance or allowance to which the proposed ward may be entitled.
- (f) Whether the proposed ward has any guardian presently.
- (g) The name and post-office address of any person nominated as guardian by the petitioner.
- (h) The names and post-office addresses of the spouse and presumptive or apparent adult heirs of the proposed ward, and all other persons believed by the petitioner to be interested.
- (i) The name and post-office address of the person or institution having the care and custody of the proposed ward.
- (j) The interest of the petitioner, and if a public official or creditor is the petitioner, then the fact of indebtedness or continuing liability for maintenance or continuing breach of the public peace as well as the authority of the petitioner to act.
- (k) Whether the proposed ward is receiving public benefits, including but not limited to medical assistance and community options program or similar benefits.
- (l) Whether there is already an existing power of attorney for health care or financial power of attorney and if so, the identity of the appointed agents.

- (m) Whether a full or limited guardianship is requested.
- (n) Whether the proposed ward has children who are not children of the current marriage.
- (o) A petition for guardianship may also include an application for protective placement or protective services or both under ch. 55.
- (p) If a petition for guardianship of the estate is filed, the fee prescribed in s. 814.66 (1)
- (b) shall be paid at the time of filing of the inventory or other documents setting forth the value of the estate.

NOTE: The committee believes full guardianships of the person (so-called "blanket guardianships") are overused. These proposed changes to the petition requirements reflect proposed changes elsewhere that seek to encourage use of limited guardianships, and to honor a ward's prior choice of agent if at all possible. (k) is included because a ward's receiving public benefits may be important information for the court in determining a guardian of the estate's ability to make decisions about a ward's finances.

(1m) If the petition under sub. (1) alleges that the person is not competent to refuse psychotropic medication, the petition shall allege all of the following:

- (a) That the person is likely to respond positively to psychotropic medication.*
- (b) That as a result of the person's failure to take medication the person is unable to provide for his or her care in the community. The person's past history is relevant to determining his or her current inability to provide for his or her care in the community under this paragraph.*

Note: This section should probably be moved.

NOTE: The committee believes that the criteria for determining whether or not a person is competent to refuse psychotropic medication should be valid whether or not the person is "in the community."

- (c) That unless protective services, including psychotropic medication, are provided the person will incur a substantial probability of physical harm, impairment, injury or debilitation or will present a substantial probability of physical harm to others.*
- (cm) That the substantial probability of physical harm, impairment, injury or debilitation is evidenced by the person's history of at least 2 episodes, one of which has occurred within the previous 24 months, that indicate a pattern of overt activity,*

attempts, threats to act or omissions that resulted from the person's failure to participate in treatment, including psychotropic medication, and that resulted in a finding of probable cause for commitment under s. 51.20 (7), a settlement agreement approved by a court under s. 51.20 (8) (bg) or commitment ordered under s. 51.20 (13).

(d) That the person has attained the age of 18 years.

Note: This should also be moved

(3) In accordance with s. 6.03 (3), any elector of a municipality may petition the circuit court for a determination that a person residing in such municipality is incapable of understanding the objective of the elective process and thereby ineligible to register to vote or to vote in an election. This determination shall be made by the court in accordance with the procedures set forth in ss. 880.08 (1) and 880.33 for determining limited incompetency. When a petition is filed under this subsection, the finding of the court shall be limited to a determination as to voting eligibility. The appointment of a guardian or limited guardian is not required for a person whose sole limitation is ineligibility to vote.

Note: In my opinion, the above should be repealed!

(2) [Note: From 880.33(1)]Examination of Proposed Ward. Whenever it is proposed to appoint a guardian on the ground of incompetency, a licensed physician or licensed psychologist, or both, shall furnish a written statement concerning the functional incapacity of the proposed ward as defined in Sec. _____, based upon such physician or psychologist's personal examination. The privilege under s. 905.04 shall not apply to this statement. A copy of the statement shall be provided to the proposed ward, guardian ad litem and attorney. Prior to such examination, under this subsection, of a person alleged to be incompetent shall be informed that his or her statements may be used as a basis for a finding of incompetency and an order for protective services. The person shall also be informed that he or she has a right to remain silent and that the examiner is required to report to the court even if the person remains silent. The issuance of such a warning to the person prior to each examination establishes a presumption that the person understands that he or she need not speak to the examiner.

4. NOTICE

(1) **Form and Delivery of Notice.** Except as otherwise provided herein, Notices shall be in writing and may be delivered personally, by certified mail, return receipt requested or by facsimile transmission. Notice shall be deemed given either by proof of personal delivery or by proof that the notice was mailed to the last known address of the recipient or sent by facsimile transmission to the last known facsimile phone number of the recipient.

(2) [From: 880.08] **Notice of hearing for appointments and rehearings.** Upon the filing of a petition for guardianship of the person or of the estate, and the court being satisfied as to compliance with s. 880.07, the court shall order notice of the time and place of hearing as follows:

NOTE: The committee wants each section of the statute to be clear that BOTH guardianships of the person and of the estate are covered by the statutory provision, or that one or the other is covered.

(1) INCOMPETENTS.

(a) A petition for guardianship of the person or of the estate shall be heard within 60 days after it is filed.

(b) A petitioner shall have notice served of a petition for appointment or change of a guardian upon the proposed incompetent and existing guardian, if any, by personal service at least 10 days before the time set for hearing.

(c) If such proposed incompetent is in custody or confinement, a petitioner shall have notice served by registered or certified mail on the proposed incompetent's custodian, who shall immediately serve it on the proposed incompetent. The custodian shall inform the proposed incompetent of the complete contents of the notice and certify thereon that the custodian served and informed the proposed incompetent and returned the certificate and notice to the circuit judge.

(d) The notice shall include the names of all persons who are petitioning for guardianship. A copy of the petition shall be attached to the notice.

Note: This does not fit. It will need to be moved to section on hearing.

(e) Such notice shall also be given personally or by mail at least 10 days before the hearing to the proposed incompetent's counsel, if any, guardian ad litem, presumptive adult heirs, agent under a financial or health care power of attorney, or other persons who have legal or physical custody of the proposed incompetent, to any governmental or private agency, charity or foundation from which the proposed incompetent is receiving aid and to such other persons or entities as the court may require. Notice need only be give to those persons whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained.

NOTE: The committee noted that In many counties, the GAL by tradition "excuses" the ward from the hearing, in clear violation of the statute, sec. 880.08(1), Stats. According to the Legal Counsel for the Elderly, a department of the American Association of Retired

Persons, there is a trend in states that have made major modifications to their guardianship codes during the past three years to provide more due process rather than less, including strengthening the requirement that proposed wards be at the hearing (Pennsylvania, S. Dakota, West Virginia, and New York). A judge in New York said that having the ward present allowed her to dismiss a majority of the petitions, or draw "more nuanced orders...permitting greater autonomy and dignity for the ward." With all of this in mind, the committee wants to firm up the statute's stand on requiring the presence of the ward at the hearing.

In addition, the committee wants the words "adversary counsel" replaced by the words "advocate counsel" in chs. 880 and 55, emphasizing the committee's view of the true role of this attorney.

The committee believes that agents under powers of attorney for property should be included in the list of those who receive notice. It may also be appropriate to specifically include agents under powers of attorney for health care, since they seem to be implicated in the phrase "or other persons who have legal or physical custody of the proposed incompetent."

Is there a reason in this statute why persons to receive notice are listed, and the statute does not simply say "all interested persons"? The definition section defines "interested person" for purposes of a petition.

(2) MINORS. When the proposed ward is a minor, notice shall be given as provided in s. 879.05 to the following persons:

- (a) To the proposed ward's spouse;
- (b) To parents;
- (c) To a minor over 14 years of age unless the minor appears at the hearing;
- (d) To any other person, agency, institution, welfare department or other entity having the legal or actual custody of the minor.
- (e) No notice need be given to parents whose rights have been judicially terminated.

(3) REHEARINGS. Notice of a rehearing to determine if a ward is a proper subject to continue under guardianship shall be given as required for the appointment of a guardian unless otherwise directed by the court.

c. OF APPOINTMENT

[From: 880.10] **Notice of appointment.** If for any reason the court fails to appoint as guardian the nominee of the minor, the guardian who qualifies shall give notice of the guardian's

appointment to the minor by certified mail addressed to the minor's last-known post-office address and an affidavit of such mailing shall be filed with the court within 10 days after the issuance of letters.

5. LIS PENDENS, VOID CONTRACTS

880.215 Lis pendens, void contracts. *A copy of the petition and order for hearing provided for in ss. 880.07 and 880.08 may be filed in the office of the register of deeds for the county; and if a guardian shall be appointed upon such application all contracts, except for necessities at reasonable prices, and all gifts, sales and transfers of property made by such ~~insane or~~ incompetent person or spendthrift, after the filing of a copy of such petition and order as aforesaid, shall be void. The validity of a contract made by a person under limited guardianship is not void, however, unless the determination is made by the court in its finding under s. 880.33 (3) that the ward is incapable of exercising the power to make contracts.*

NOTE: *The term "insane" is not needed in this statute, since it refers to no group not already covered under the definition of "incompetent." This statute is placed here since it refers to current ss. 880.07 and 880.08 which are placed right before this one.*

6. GAL APPOINTMENT AND DUTIES

(1) [From: 880.331(1)-(4),(6)-(7)] Guardian ad litem in incompetency cases.

(1) APPOINTMENT. The court shall appoint a guardian ad litem whenever it is proposed that the court appoint a guardian on the ground of incompetency under Sec. ____, protectively place a person or order protective services under s. 55.06, review any protective placement or protective service order under s. 55.06 or terminate a protective placement under s. 55.06.

(2) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted to practice in this state. No person who is an interested party in a proceeding, appears as counsel in a proceeding on behalf of any party or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding.

(3) RESPONSIBILITIES. The guardian ad litem shall be an advocate for the best interests of the proposed ward or alleged incompetent as to guardianship, protective placement and protective services. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of the proposed ward or alleged incompetent or the positions of others as to the best interests of the proposed ward or alleged incompetent. The guardian ad litem has none of the rights or duties of a general guardian.

(4) GENERAL DUTIES. The court shall in all cases require the appointment of an attorney as guardian ad litem in accordance with s. 757.48 (1) . The guardian ad litem shall do all of the following:

(a) Interview the proposed ward or alleged incompetent and explain the contents of the petition, the applicable hearing procedure, the right to counsel and the right to request or continue a limited guardianship.

(b) Interview the proposed guardian and any other person seeking appointment as guardian.

(c) Advise the proposed ward or alleged incompetent, both orally and in writing, of that person's rights to a jury trial, to an appeal, to counsel and to an independent medical or psychological examination on the issue of competency, at county expense if the person is indigent.

(d) Request that the court order additional medical, psychological or other evaluation, if necessary.

(e) If applicable, inform the court that the proposed ward or alleged incompetent objects to a finding of incompetency, the present or proposed placement or the recommendation of the guardian ad litem as to the proposed ward's or alleged incompetent's best interests or that the proposed ward's or alleged incompetent's position on these matters is ambiguous.

(f) Inform the court and the petitioner (or petitioner's counsel where the petitioner is represented) if the proposed ward requests representation by counsel.

(g) Attend all court proceedings related to the guardianship.

(h) Present evidence concerning the best interests of the proposed ward or alleged incompetent, if necessary.

(i) Report to the court on any other relevant matter that the court requests.

(6) **COMMUNICATION TO A JURY.** In jury trials under ch. 55 or 880, the court or guardian ad litem may tell the jury that the guardian ad litem represents the interests of the proposed ward or alleged incompetent.

(7) **TERMINATION AND EXTENSION OF APPOINTMENT.** The appointment of a guardian ad litem under sub. (1) terminates upon the entry of the court's final order or upon the termination of any appeal in which the guardian ad litem participates, even if counsel has been appointed for the proposed ward or alleged incompetent. The court may extend that appointment, or reappoint a guardian ad litem whose appointment under this section has terminated, by an order specifying the scope of responsibilities of the guardian ad litem. At any time, the guardian ad litem, any

party or the person for whom the appointment is made may request that the court terminate any extension or reappointment. The guardian ad litem may appeal, may participate in an appeal or may do neither. If an appeal is taken by any party and the guardian ad litem chooses not to participate in that appeal, he or she shall file with the appellate court a statement of reasons for not participating. Irrespective of the guardian ad litem's decision not to participate in an appeal, the appellate court may order the guardian ad litem to participate in the appeal.

NOTE: The committee wants also to include the following changes to the statute, but wonders whether the legislature, as opposed to the Wisconsin Supreme Court, can make these changes to guardian ad litem duties:

1. Make clear in the statute that the GAL is to attend all hearings.
2. Add to the statute that the GAL is to inform the probate court and petitioner (if pro se) or petitioner's attorney by letter of the need for advocate counsel. Note: These have been added

8. HEARING

a. EVIDENTIARY MATTERS

NOTE: *Several Registers in Probate have suggested that at the hearing the court determine which assets need to be reported annually.*

Any determination by the court as to whether or not the proposed ward is incompetent shall be by clear and convincing evidence.

b. PRESENCE OF GUARDIAN

(1) The guardian must be physically present at the hearing, unless such attendance is excused by the court. The court may, for good cause shown, permit attendance by telephone.

NOTE: The committee believes strongly that the guardian should make every effort to appear at the hearing, but realizes that in some cases "appearing" by telephone may need to be allowed.

c. PRIVACY OF HEARING

(1) [**Note: From 880.33(2)(e)**] Every hearing on a petition for guardianship shall be closed, unless the proposed ward or his or her attorney acting with the proposed ward's consent moves that it be open. If the hearing is closed, only persons in interest, including representatives of providers of service and their attorneys and witnesses, may be present.

d. TIME OF HEARING

(1) [**Note:From 880.075**] **Time of hearing Petition for Guardianship.** A petition for guardianship shall be heard within 60 days after it is filed.

(2) [**From: 880.33(2)(a)(Next to last sentence)**] The guardian ad litem and attorney for the proposed ward shall be provided with a copy of the report of the examining physician or psychologist at least 96 hours in advance of the hearing.

880.33(2)(d) The hearing on a petition which contains allegations under s. 880.07 (1m) shall be held within 30 days after the date of filing of the petition, except that if a jury trial demand is filed the hearing shall be held within either 30 days after the date of filing of the petition or 14 days after the date of the demand for a jury trial, whichever is later. A finding by a court under s. 51.67 that there is probable cause to believe that the person is a proper subject for guardianship under s. 880.33 (4m) has the effect of filing a petition under s. 880.07 (1m).

9. WARD'S PRESENCE

The petitioner shall cause the proposed incompetent, if able to attend, to be produced at the hearing. The proposed ward must be present at the hearing unless waived by the GAL. In making this determination the GAL shall consider the effect of the proposed ward's attendance on the ward's physical or psychological health in relation to the importance of the proceeding and the ward's expressed wishes. If the person is unable to attend a hearing because of physical inaccessibility or lack of transportation, the court shall hold the hearing in a place where the person may attend if requested by the proposed ward, guardian ad litem, advocate counsel or other interested person. If the ward is a resident of a nursing home or other facility and is unable to personally attend the hearing, the court shall hold the hearing at such nursing home or other facility if requested by the proposed ward, the proposed ward's counsel or the guardian ad litem.

10. DETERMINATION AND ORDER

880.33(4m) (a) If the court finds by clear and convincing evidence that the person is not competent to refuse psychotropic medication and the allegations under s. 880.07 (1m) are proven, the court shall appoint a guardian to consent to or refuse psychotropic medication on behalf of the person as provided in the court order under par. (b).

(b) In any case where the court finds that the person is not competent to refuse psychotropic medication under s. 880.07 (1m) and appoints a guardian to consent to or refuse psychotropic medication on behalf of the person, the court shall do all of the following:

1. Order the appropriate county department under s. 46.23, 51.42 or 51.437 to develop or furnish, to provide to the ward, and to submit to the court, a treatment plan specifying the protective services, including psychotropic medication as ordered by the treating physician, that the proposed ward should receive.

2. Review the plan submitted by the county department under subd. 1., and approve, disapprove or modify the plan.

3. If the court modifies the treatment plan under subd. 2., the court shall order the appropriate county department under s. 46.23, 51.42 or 51.437 to provide the modified treatment plan to the ward.

4 Order protective services under ch. 55.

5. Order the appropriate county department under s. 46.23, 51.42 or 51.437 to ensure that protective services, including psychotropic medication, are provided under ch. 55, in accordance with the approved treatment plan.

11. DISPOSITIONAL ALTERNATIVES

[NOTE: ALL OF THE FOLLOWING UNDERLINED MATERIAL COMES FROM NEW YORK STATUTE SEC. 81.16]

[Note: From 880.12] Following the hearing as provided in sec. ____ above, the Court shall dispose of the case as follows:

(1) Dismissal of the petition. If the person alleged to be incompetent under this Chapter is found not to be incompetent, the court shall dismiss the petition. The court may also consider an application by the alleged incompetent for the appointment of a conservator pursuant to Sec. ____.

(2) Protective arrangements and single transactions. If the person alleged to be incompetent is found to be incompetent, the court without appointing a guardian may authorize, direct, or ratify any transaction or series of transactions necessary to achieve any security, service or care arrangement meeting the foreseeable needs of the ward, or may authorize, direct or ratify any contract, trust, or other transaction relating to the ward's property and financial affairs if the court determines that the transaction is necessary as a means of providing for personal needs and/or property management for the alleged ward. Before approving a protective arrangement or other transaction under this subdivision, the court shall consider the interests of dependents and creditors of the ward, and in view of the person's functional level, whether a guardianship is necessary. The court may appoint a special guardian to assist in the accomplishment of any protective arrangement or other transaction authorized under this subdivision. The special guardian shall have the authority conferred by the order of appointment, shall report to the court

on all matters done pursuant to the order of the appointment and shall serve until discharged by order of the court. The court may approve a reasonable compensation for the special guardian; however, if the court finds that the special guardian has failed to discharge his or her duties satisfactorily in any respect, the court may deny or reduce the amount of compensation or remove the special guardian.

(3) Appointment of Guardian. If the proposed ward is found to be incompetent, the Court shall enter a Determination and Order Appointing guardian, specifying the powers to be granted to the guardian as provided in Sec. ____.

(4) Co-Guardians. Co-guardians of the person may be appointed if they are both the parents of the proposed ward. Other proposed co-guardians of the person, or co-guardians of the estate, may be appointed subject to such conditions that the court may impose. It is presumed that any guardian's or co-guardians' individual decisions will be binding unless otherwise ordered by the court.

(5) Powers of Attorney for Health Care. If the incompetent has executed a power of attorney for health care under ch. 155, the power of attorney for health care shall remain in effect. The court shall then limit the power of the guardian to make those health care decisions for the ward that are not to be made by the health care agent under the terms of the power of attorney for health care instrument, unless the guardian is the health care agent under those terms, or if the court finds that the guardian of the person should take precedence.

(6) Financial Power of Attorney. If the proposed ward has executed a financial power of attorney, the financial power of attorney shall remain in effect. The court shall then limit the power of the guardian of the estate to make those property decisions for the ward that are not to be made by the financial agent under the terms of the financial power of attorney instrument, unless the guardian is the financial agent under those terms, or if the court finds that the guardian of the estate should take precedence.

NOTE: The committee wanted, to clarify the interplay between the guardianship statute and powers of attorney, basically having the court treat both powers of attorney (health care and property) the same way. Specifically, where a ward has both a guardian of property and a power of attorney for property:

1. The court is to give deference to the POA/P, and
2. There should be a presumption that the POA/P remains in effect unless the court finds that the guardianship of property should take precedence.

In addition, for a ward who has both a guardian of the person and a power of attorney for health care, switch presumptions under sec. 880.33(8)(b), Stats., so that the POA/HC remains in effect unless the court orders otherwise.

a. BOND

(1) **[From: 880.12] Amount and Sufficiency of Bond.** The order shall specify the amount of the bond, if any, to be given by the guardian of the estate conditioned upon the faithful performance of the duties of the guardian of the estate. No bond shall be required for the guardian of the person.

NOTE: Since a bond is only required (if at all) for a guardian of the estate, the committee suggests adding that no bond is required for a guardian of the person.

(2) **WAIVER OF BOND.** (a) Unless required under s. 880.60 (9), the court may waive the requirement of a bond at any time in its discretion or if so requested in a will wherein a nomination appears. (b) Whenever a guardian has or will have possession of funds with a total value of \$100,000 or less, the court may direct deposit of the funds in an insured account of a bank, credit union, savings bank or savings and loan association in the name of the guardian and the ward and payable only upon further order of the court. In such event the court may waive the requirement of a bond.

(3) **BLANKET BOND FOR EMPLOYEE GUARDIAN OR CONSERVATOR.** The circuit court may designate one or more persons who are county institutional employees, whose duty it is to act as guardian of one or more estates of incompetent persons upon appointment by the court, or as conservator for the estates of persons making application therefor, who are residents of the county home, patients of the county hospitals or county mental hospitals. The appointments shall be made subject to this chapter. The person, before entering upon duties, shall take an official oath. The court may waive the requirement of a bond or may require the person to give bond, with sufficient sureties, to the judge of the court, in a sum not less than \$1,000 subject to court approval. The bond shall cover the person so designated and appointed in all guardianships and conservatorships to which the person has been or shall be appointed by the court. Additional bonds may be required from time to time. The expense of surety upon the bonds shall be paid by the county treasurer on the order of the circuit judge. The term of the person appointed shall terminate upon resignation or removal and approval of the person's accounts by the court.

Note: Should the above section be retained?

b. LETTERS OF GUARDIANSHIP

880.14 When letters to be issued. When a guardian has given bond as required and the bond has been approved by the judge, letters under the seal of the court shall be issued to the guardian.

11. RIGHTS OF PROPOSED WARD

a. TO COUNSEL

(1) [**From: 880.33(2)(a)(First two sentences)**] The proposed ward has the right to counsel whether or not present at the hearing on determination of competency if, at least 72 hours before the hearing, the alleged incompetent requests; the guardian ad litem or any other person states that the alleged incompetent is opposed to the guardianship petition; or the court determines that the interests of justice require it. *Such advocate counsel shall be a zealous advocate for the ward's expressed wishes. The assigned attorney shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.* Note: Should this be in the statute or should SCR be modified to clarify duties of Advocacy Counsel.

NOTE: The committee wants to emphasize the advocacy nature of the ward's counsel, by changing the name from "adversary counsel" to "advocate counsel," and by adding the above phrase clarifying that person's role in representing the ward.

(2) [**From: 880.33(2)(a)2.**] If the person requests but is unable to obtain legal counsel, the court shall appoint legal counsel. *If the person is represented by counsel appointed under s. 977.08 in a proceeding for a protective placement under s. 55.06 or for the appointment of a guardian under s. 880.07 (1m), the court shall order the counsel appointed under s. 977.08 to represent the person.*

NOTE: Splitting up 880.33 into parts (as above and below) seemed to make the rights of the ward more clear than the current long section. The committee wants the rights of the ward to be quite clear in the statute.

b. TO JURY TRIAL

(1) [**From: 880.33(2)(a)(Third and fourth sentence).**] The proposed ward has the right to a trial by a jury if demanded by the proposed ward, attorney or guardian ad litem. A jury trial is deemed waived unless demanded at least 48 hours prior to the time set for the hearing. The number of jurors shall be determined under s. 756.096 (3) (b). The proposed ward, attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including the physician or psychologist reporting to the court.

except that if the petition contains the allegations under s. 880.07 (1m) and if notice of the time set for the hearing has previously been provided to the proposed ward and his or her counsel

880.33(2)(a)(Last sentence). Any final decision of the court is subject to the right of appeal.

c. TO INDEPENDENT MEDICAL EXAMINATION

(1) [**Note: From 880.33(2)(b).**] If requested by the proposed ward or anyone on the proposed ward's behalf, the proposed ward has the right at his or her own expense, or if indigent at the

expense of the county where the petition is filed, to secure an independent medical or psychological examination relevant to the issue involved in any hearing under this chapter, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

d. ELIGIBILITY TO VOTE

880.33(9) *All the rights and privileges afforded a proposed incompetent under this section shall be given to any person who is alleged to be ineligible to register to vote or to vote in an election by reason that such person is incapable of understanding the objective of the elective process. The determination of the court shall be limited to a finding that the elector is either eligible or ineligible to register to vote or to vote in an election by reason that the person is or is not capable of understanding the objective of the elective process. The determination of the court shall be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925 or 6.93 with the responsibility for determining challenges to registration and voting which may be directed against that elector. The determination may be reviewed as provided in s. 880.34 (4) and (5) and any subsequent determination of the court shall be likewise communicated by the clerk of court.*

Note: Do we want to get rid of this.

e. WARD'S EXPENSES IN PROCEEDINGS

880.24(2) **Ward's expenses in proceedings.** When a guardian is appointed the court may allow reasonable expenses incurred by the ward in contesting the appointment.

12. PROTECTIVE PLACEMENT

880.33(7) A finding of incompetency and appointment of a guardian under this subchapter is not grounds for involuntary protective placement. Such placement may be made only in accordance with s. 55.06.

B. EXCEPTIONS TO BASIC GUARDIANSHIP PROCEDURES

1. LIMITED TERM GUARDIAN (TEMPORARY OR EMERGENCY)

(1) Emergency Temporary Guardian

(a) **When Permitted.** If it is demonstrated to the Court that an emergency situation requires the appointment of a temporary guardian of the person or estate of an individual, then the Court may appoint an Emergency Temporary Guardian upon the following terms and conditions.

(b) **Duration and Extent of Authority.** The Emergency Temporary Guardian may be

appointed for a term not to exceed 60 days. This period may be extended by the court for good cause for one additional 60 day period. No further temporary guardianship may be imposed by the court on the ward under this provision for a period of three (3) months following the expiration of the preceding temporary emergency guardianship. The authority of the Emergency Temporary Guardian shall be limited to those acts specified in the Determination and Order Appointing Emergency Temporary Guardian and which acts shall be limited to those that are reasonably related to the specific reasons specified in the Petition for Emergency Temporary guardianship that give rise to the need for the appointment of an Emergency Temporary Guardian. The Emergency Temporary Guardian shall not have the power to sell real estate or to expend an amount in excess of \$2,000 without probate court approval.

(c) Procedure for Appointment. The following procedures shall be followed in appointing the Emergency Temporary Guardian:

(1) A petition shall be filed containing the information specified in Sec. _____. In addition the Petition shall recite the reasons for the need to appoint an emergency temporary guardian and the powers requested for the Emergency Temporary Guardian. The Petition shall also include a Petition for appointment of a permanent guardian of the person and/or estate or shall state why a permanent guardianship is not being sought.

(2) The petition and order for hearing shall be served on the proposed ward either before the hearing or as soon as practicable thereafter, but in no event not later than 5 calendar days after the hearing.

(3) A guardian ad litem shall be appointed in all cases. The guardian ad litem shall attempt to meet with the proposed ward in advance of the hearing or as soon as practicable thereafter, but in no event not later than 7 calendar days after the hearing. The guardian ad litem shall report to the court on the advisability of the Emergency Temporary Guardianship at the hearing or not later than 10 calendar days after the hearing.

(4) The Court shall hold a hearing on the Emergency Temporary Guardianship no earlier than 48 hours from the filing of the Petition. At the hearing, the petitioner shall produce a report from a licensed physician or psychologist showing that there is a reasonable likelihood that the proposed ward will meet the definition of incompetence set forth in Sec. _____ above. The guardian ad litem shall attend the hearing.

(5) If the Emergency Temporary Guardian is appointed, the ward shall be given notice of the appointment not later than 3 calendar days after the hearing. If the ward, his/her counsel, the guardian ad litem or another interested party so request,

the Court shall order a rehearing on the issue of appointment of the emergency temporary guardian within 10 calendar days. If a rehearing is requested, the Temporary Emergency Guardian shall take no actions to spend the assets of the ward without the approval of the court.

NOTE: The committee would like the following recommendations added to the statute:

(1) TEMPORARY GUARDIAN - PROCEDURES

1. The guardianship may be imposed for up to 10 days before a hearing is required to be held.
2. A GAL must be appointed
3. There must be evidence related to the proposed ward's need for a guardianship
4. The GAL must meet with the proposed ward and read his or her rights.

(2) EMERGENCY GUARDIAN - PROCEDURES

1. The guardianship may be imposed for up to 10 days before a hearing is required to be held
2. Before the guardianship is imposed there must be a petition filed with the court alleging why it is necessary to have an emergency guardianship
3. This can be an ex parte proceeding
4. Letters of appointment shall state the reason for appointment, the basis for competency, the length of time for which a guardian is to be appointed, and the guardian's specific powers.

Note: The Committee also recommends the following changes to Sec. 50.06, Wis. Stats.

50.06 Certain admissions to facilities.

(1) In this section, "incapacitated" means unable to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his or her health care decisions, including decisions about his or her post-hospital care.

(2) An individual under sub. (3) may consent to admission to a facility, of an incapacitated individual who does not have a valid power of attorney for health care and who has not been adjudicated incompetent under ch. 880, if all of the following apply:

(a) No person who is listed under sub. (3) in the same order of priority as, or higher in priority than, the individual who is consenting to the proposed admission disagrees with the proposed admission.

(am)

1. Except as provided in subd. 2., no person who is listed under sub. (3) and who resides with the incapacitated individual disagrees with the proposed admission.

2. Subdivision 1. does not apply if any of the following applies:

a. The individual who is consenting to the proposed admission resides with the incapacitated individual.

b. The individual who is consenting to the proposed admission is the spouse of the incapacitated person.

(b) The individual for whom admission is sought is not diagnosed as developmentally disabled or as having a mental illness at the time of the proposed admission.

(c) A petition for guardianship for the individual under Sec. ____ and a petition for protective placement of the individual under s. 55.06 (2) are filed prior to the proposed admission. In such cases a guardian ad litem shall be immediately appointed and shall interview the proposed ward not later than 5 calendar days following the date of filing of the petition.

(3) The following individuals, in the following order of priority, may consent to an admission under sub. (2):

(a) The spouse of the incapacitated individual.

(b) An adult son or daughter of the incapacitated individual.

(c) A parent of the incapacitated individual.

(d) An adult brother or sister of the incapacitated individual.

(e) A grandparent of the incapacitated individual.

(f) An adult grandchild of the incapacitated individual.

(g) An adult close friend of the incapacitated individual.

(4) A determination that an individual is incapacitated for purposes of sub. (2) shall be made by 2 physicians, as defined in s. 448.01 (5), or by one physician and one licensed psychologist, as defined in s. 455.01 (4), who personally examine the individual and sign a statement specifying that the individual is incapacitated. Mere old age, eccentricity or physical disability, either singly or together, are insufficient to make a finding that an individual is incapacitated. Neither of the individuals who make a finding that an individual is incapacitated may be a relative, as defined in s. 242.01 (11), of the individual or have knowledge that he or she is entitled to or has a claim on any portion of the individual's estate. A copy of the statement shall be included in the individual's records in the facility to which he or she is admitted.

(5)

(a) Except as provided in par. (b), an individual who consents to an admission under this section may, for the incapacitated individual, make health care decisions to the same extent as a guardian of the person may and authorize expenditures related to health care to the same extent as a guardian of the estate may, until the earliest of the following:

1. Sixty days after the admission to the facility of the incapacitated individual.

2. Discharge of the incapacitated individual from the facility.

3. Appointment of a guardian for the incapacitated individual.

(b) An individual who consents to an admission under this section may not authorize expenditures related to health care if the incapacitated individual has an agent under a durable power of attorney, as defined in s. 243.07 (1) (a), who may authorize expenditures related to health care.

(6) If the incapacitated individual is in the facility after 60 days after admission and a guardian has not been appointed, the authority of the person who consented to the admission to make decisions and, if sub. (5) (a) applies, to authorize expenditures is extended for 30 days for the purpose of allowing the facility to initiate discharge planning for the incapacitated individual.

(7) An individual who consents to an admission under this section may request that an assessment be conducted for the incapacitated individual under the long-term support community options program under s. 46.27 (6).

(8) If the allegedly incapacitated individual, his/her guardian ad litem or any interested person under Sec. ____ [of the guardianship statute] objects to the admission, the Court in which the guardianship petition is pending shall hold a hearing within 10 calendar days of a request by any person on the issue of whether the individual is incapacitated and/or whether the placement shall continue pending the final guardianship hearing.

Note: It is the intent of the committee that the Sec. 50.06 (Act 187) family admission procedure shall be extended to cover admissions from home, other assisted living/CBRF type facilities, nursing homes in other states in addition to hospitals. To provide additional procedural protections, a guardian ad litem should be immediately appointed who will immediately interview the proposed ward. In addition, if the proposed ward, the GAL or any other interested person objects, the matter must be heard by the court within 10 days. Since the person admitting the individual to the facility has only the powers of a guardian of the person, a Temporary Emergency Guardian will need to be appointed to handle any financial matters, if that is really necessary.

2. STANDBY GUARDIAN

880.36 Standby guardianship. (1) A petition for the appointment of a standby guardian of the person or estate or both of a minor or person found incompetent under s. 880.08 may be brought at any time.

(2) At any hearing conducted under this section the court may designate one or more standby guardians of the person or estate whose appointment shall become effective immediately upon the death, incapacity, or resignation of the initially appointed guardian, or when the initially appointed guardian is unable to fulfill his or her duties, for example, during an extended vacation or illness.. The powers and duties of the standby guardian shall be the same as those of the initially appointed guardian. The standby guardian shall receive a copy of the court order establishing or modifying the initial guardianship, and the order designating the standby guardian. Upon assuming office, the standby guardian shall so notify the court,

NOTE: The committee believes that the above addition would address the situation where a guardian simply needs someone to step in for a time, not take over guardianship duties

permanently. What to do in this situation is not clear in the current statute.

(3) A standby guardianship of a minor is not applicable so long as a person has living one natural or adoptive parent who is willing and capable of exercising legal guardianship. Upon the death of the surviving parent, or upon a determination that the parents or surviving parent are incapable of exercising legal guardianship of the person, the standby guardian of the person or estate or both shall automatically assume the duties of guardian, subject only to confirmation by the court within 60 days following assumption of the standby guardian's duties of office.

(4) A standby guardianship of a minor becomes inoperative at the age of 18 unless there is a further determination of incompetency at that time.

3. SUCCESSOR GUARDIAN

880.17 Successor guardian. (1) Appointment. When a guardian dies, is removed by order of the court, or resigns and the resignation is accepted by the court, the court, on its own motion or upon petition of any interested person, may appoint a competent and suitable person as successor guardian. The court may, upon request of any interested person or on its own motion, direct that a petition for appointment of a successor guardian be heard in the same manner and subject to the same requirements as provided under this chapter for an original appointment of a guardian.

(2) Notice. If the appointment under sub. (1) is made without hearing, the successor guardian shall provide notice to the ward and all interested persons of the appointment, the right to counsel and the right to petition for reconsideration of the successor guardian. The notice shall be served personally or by mail not later than 10 days after the appointment.

4. GUARDIAN OF A PERSON NOT COMPETENT TO REFUSE PSYCHOTROPIC MEDICATION

5. GUARDIAN FOR MENTALLY ILL PATIENT OR CONSERVATOR FOR COUNTY HOSPITAL PATIENT OR COUNTY HOME RESIDENT.

880.295 Guardian for mentally ill patient or conservator for county hospital patient or county home resident. (a) *When a patient in any state or county hospital or mental hospital or in any state institution for the mentally deficient, or a resident of the county home or infirmary, appears in need of a guardian, and does not have a guardian, the department of health and social services by its collection and deportation counsel, or the county corporation counsel, may apply to the circuit court of the county in which the patient resided at the time of commitment or the circuit court of the county in which the facility in which the patient resides is located for the appointment of a guardian of the person and estate, or either, or for the appointment of a conservator of the estate, and the court, upon the application, may appoint the guardian or conservator in the manner provided for the appointment of guardians under ss. 880.08 (1) and 880.33 or for the appointment of conservators under s. 880.31. If application is made by a corporation counsel, a copy of the petition made to the court shall be*

filed with the department of health and social services. If application is made by a corporation counsel for appointment of a guardian of the estate of the patient or resident, or by the patient or resident for appointment of a conservator of the patient's or resident's estate, the court may designate the county as guardian or conservator if the court finds that no relative or friend is available to serve as guardian or conservator and the county is not required to make or file any oath or give any bond or security, except in the discretion of the court making the appointment, as similarly provided under s. 223.03 (8) in the case of the appointment of a trust company bank corporation. The court may place any limitations upon the guardianship or conservatorship as it deems to be in the best interest of the patient. Before any county employee administers the funds of a person's estate of which the county has been appointed guardian or conservator, the employee must be designated as securities agent in the classified service of the county, and the employee's designation as securities agent shall appear on all court papers which the security agent signs in the name of the county as guardian or conservator. The securities agent, before entering upon the duties, shall also furnish an official bond in such amount and with such sureties as the county board determines, subject to the prior approval of the amount by the court assigned to exercise jurisdiction. The bond shall be filed in the office of the register in probate, and a duplicate original thereof filed in the office of the county clerk. A conservatorship under this section shall be terminated by the court upon discharge of the patient unless application for continued conservatorship is made. The superintendent or director of the facility shall notify the court of the discharge of a patient for whom a guardian or conservator has been appointed under this subsection.

(b) Any guardian heretofore or hereafter appointed for any such inmate, who, having property of his or her ward in his or her possession or control exceeding \$200 in value, fails to pay within 3 months after receipt of any bill thereof for the ward's care and support from the department of health and social services or the agency established pursuant to s. 46.21, shall, upon application of the collection and deportation counsel of said department or in counties having a population of 500,000 or more, the district attorney, forthwith be removed.

NOTE: It is advisable to check the drafting file for this section to determine what the legislature intended by its passage, so that it can be properly placed in any revised statute.

6. *NOTE: Make a cross reference here to 880.60, the Uniform Veteran's Guardianship Act.*

SUBCHAPTER V

POST APPOINTMENT MATTERS

A. INVENTORY

[From: 880.18 Inventory.] 1. When a guardian of the estate has been appointed an inventory shall be made which shall list all of the ward's property and interests in property (including any marital property interests, regardless of how the asset is titled)

2. The following information shall be provided regarding each asset:

- a. How the asset is held or titled;
- b. The name and relationship of any co-owners;
- c. The marital property classification of property and, for any property which is marital property, which spouse has management and control rights with respect to such property

3. The initial inventory is to be filed within 60 days after appointment of the guardian, unless the court extends or shortens the time.

4. The court shall direct the guardian as to which interested parties shall receive copies of the inventory.

[From: 880.07(4) Fees.] 5. The fee prescribed in s. 814.66 (1) (b) shall be paid at the time of filing of the inventory.

(a) An appraisal of all or any part of the ward's estate shall be made when ordered by the court.

(b) [From: 880.191 Inventories, accounts.]

1. Verification, Examination in Court. Every guardian shall verify by the guardian's oath every inventory required of the guardian and verification shall be to the effect that the inventory is true of all property which belongs to his or her decedent's estate or his or her ward, which has come to the guardian's possession or knowledge, and that upon diligent inquiry the guardian has not been able to discover any property belonging to the estate or ward which is not included therein. The court, at the request of any party interested, or on its own motion, may examine the guardian on oath in relation thereto, or in relation to any supposed omission.

2 Citation to File Inventory and to Account. If any guardian neglects to file the inventory or account when required by law, the circuit judge shall call the guardian's attention to the neglect. If the guardian still neglects his or her duty in the premises, the court shall order the guardian to file the inventory and the costs may be adjudged against the guardian.

NOTE: The committee has suggested the following additions to 880.191. The proposed procedures are taken from those required for review of a health care agent under a power of attorney for health care, 155.60(4)(a):

(4) Procedures to challenge a guardian's actions or inactions.

1. The court may give interested persons a private cause of action with attorney fees to be paid by the guardian if the guardian has defrauded the ward. If the person bringing the action does not prevail, the court may award attorney fees to the guardian.

2. Any interested person may petition the court to review whether the guardian is performing his or her duties in accordance with the terms of the guardianship. If the court finds after a hearing that the guardian has not been performing in accordance with the terms of the guardianship, the court may do any of the following:

a. Direct the guardian to act in accordance with the terms of the guardianship.

b. Require the guardian to report to the court concerning performance of the guardian's duties at periods of time established by the court.

c. Remove the guardian and appoint a new guardian.

B. ACCOUNTING

1. IN GENERAL

[From: 880.25 Accounting (by guardian of the estate).] 1. Annual Accounts. Except as provided in subd. 3, unless waived by the court, every guardian, including corporate guardians, shall, prior to April 15 [change this date??] of each year, file an account under oath specifying the amount of property received and held or invested by the guardian, the nature and manner of the investment, and the guardian's receipts and expenditures during the preceding calendar year. When ordered by the court, the guardian shall within 30 days render and file a like account for any shorter term. In lieu of the filing of these accounts before April 15 of each year, the court may, by appropriate order upon motion of the guardian, direct the guardian of an estate to thereafter render and file the annual accountings within 60 days after the anniversary date of the guardian's qualification as guardian, with the accounting period from the anniversary date of qualification to the ensuing annual anniversary date. The guardian shall also report any change in the status of the surety upon the guardian's bond. At the court's discretion and if determined to be in the ward's best interests, the court may direct the guardian as to which interested parties shall receive copies of the account.

2. Display of Assets. Upon rendering the account the guardian shall produce for examination by the court, or some person satisfactory to the court, all securities, evidences of deposit and investments reported, which shall be described in the account in sufficient detail so that they may be readily identified. It shall be ascertained whether the securities, evidences of deposit and investments correspond with the account.

3. Small Estates.

- a. When the estate of a ward does not exceed \$5,000 in value, no annual accounting is required.
- b. If, after a determination under sub.1, the ward's estate at any time increases above \$5,000 in value, the guardian is to notify the court, which will determine whether annual and final accountings will be required.

NOTE: The committee recommendations from which the above changes were made was as follows. Note that changes were also proposed for 880.26(3):

1. Where no annual accounting is required (initial inventory indicates assets less than \$5,000), no annual or final accounts are needed either. If, however, the estate goes over \$5,000 (e.g. the ward receives an inheritance), the guardian is to notify the court for a determination whether annual and final accountings will be required. In this situation (where no annual accounting is required), instead of requiring a closing inventory, the guardian is simply to list assets left at the time the guardianship is terminated (including death of the ward).
2. On both initial inventory and annual accountings, at the court's discretion and if determined to be in the ward's best interests, the court may direct the guardian as to which interested parties shall also receive copies.
3. Clarify that courts must review inventories and accounts and then take the necessary appropriate remedial actions.
4. Examination of Accounts. The account shall be examined under the court's direction. If it is not satisfactory the court shall make such order thereon as justice requires. Notice to the guardian may be served personally or by certified mail as the court directs. When the examination of a guardian's account is upon notice a guardian ad litem of the ward may be appointed.
5. Notice. No action by the court upon any account shall be final unless it is upon notice.

2. MARITAL PROPERTY ISSUES

880.173 Guardian of the estate of a married person. (1) A guardian of the estate appointed under this chapter for a married person may exercise with the approval of the court, except as limited under s. 880.37, any management and control right over the marital property or property other than marital property and any right in the business affairs which the married person could exercise under ch. 766 if the person were not determined under s. 880.12 to be a proper subject for guardianship. Under this section, a guardian may consent to act together in or join in any transaction for which consent or joinder of both spouses is required or may execute a marital property agreement with the other spouse, but may not make, amend or revoke a will.

(2) The powers under sub. (1) are in addition to powers otherwise provided for a guardian of the estate.

NOTE: *See the next sheet with recommendations from Susan Podebradsky (Dane County Guardianship Administrator) and several Registers in Probate about allowing flexibility in accounting for guardians of a spouse. Include these recommendations, as best you can, in the statute.*

[From: 880.245 Accounting by agent]. 6. The circuit court, upon the application of any guardian appointed by it may order any person who has been entrusted by the guardian with any part of the estate of a decedent or ward to appear before the court, and may require the person to render a full account, on oath, of any property or papers belonging to the estate which have come to the person's possession and of his or her proceedings thereon. If the person refuses to appear and render an account the court may proceed against him or her as for contempt.

C. FEES

D. DURATION OF GUARDIANSHIP; REVIEW; TERMINATION

[From: 880.26 Termination of guardianship.] 1. Termination of Guardianship of the Person. A guardianship of the person shall terminate:

(a) When a minor ward attains his or her majority, unless the minor is incompetent.

(b) When a minor ward lawfully marries.

a. When the court adjudicates a former incompetent to be competent.

b. When the ward moves out of this state and a guardian is appointed in the state to which the ward has moved.

2. Termination of Guardianship of the Estate. A guardianship of the estate shall terminate:

(a) When a minor ward attains his or her majority.

(b) When a minor ward lawfully marries and the court approves such termination.

a. When the court adjudicates a former incompetent to be competent.

b. When a ward dies (unless the estate can be settled as provided by s. 880.28).

3. Depleted Guardianships. When the court determines that the estate of the ward is below \$5,000 and reduced to a point where it is to the advantage of the ward to dispense with the formalities of guardianship, the court may do one of the following:

a. Terminate the guardianship and authorize disposition of the remaining assets as provided by s. 880.04 (2). The court, as a part of the disposition, may order the guardian to make appropriate financial arrangements for the burial or other disposition of the remains of the ward.

(b) Keep the guardianship, but waive bond and accounting.

NOTE: Relevant language in the petition and order sections of the statutes would need to be changed accordingly.

The committee recommendations from which the above changes were made was as follows. Note that changes were proposed also for 880.25(3):

1. Where no annual accounting is required (initial inventory indicates assets less than \$5,000), no annual or final accounts are needed either. If, however, the estate goes over \$5,000 (e.g. the ward receives an inheritance), the guardian is to notify the court for a determination whether annual and final accountings will be required. In this situation (where no annual accounting is required), instead of requiring a closing inventory, the guardian is simply to list assets left at the time the guardianship is terminated (including death of the ward).

2. On both initial inventory and annual accountings, at the court's discretion and if determined to be in the ward's best interests, the court may direct the guardian as to which interested parties shall also receive copies.

3. Clarify that courts must review inventories and accounts and then take the necessary appropriate remedial actions.

[From: 880.34 Duration of guardianship; review]. Review and Modification of Guardianship

1. Any guardianship of an individual found to be incompetent under this chapter shall continue during the life of the incompetent, or until terminated by the court.

Upon reaching the age of majority, an incompetent subject to guardianship under this chapter shall be reviewed by the court for the purpose of determining whether the guardianship should be continued or modified. The court shall make a specific finding of any rights under s. 880.33 (3) which the individual is competent to exercise at the time.

2. A ward who is 18 years of age or older, any interested person acting on the ward's behalf, or the ward's guardian may petition for a review of incompetency. Upon such a petition for review, the court shall:

- a. Appoint a guardian ad litem;
- b. Fix a time and place for hearing;
- c. Designate those persons who are entitled to notice of hearing and how notice shall be given of such hearing;
- d. Conduct a hearing at which the ward shall be present and shall have the right to a jury trial, if demanded.
- e. The ward shall also have the right to counsel and the court shall appoint counsel if the ward is unable to obtain counsel. If the ward is indigent, counsel shall be provided at the expense of the county having jurisdiction of the guardianship.

3. After the hearing provided above, the court may terminate or modify the guardianship.

4. Notwithstanding any finding of incompetence, a ward may retain and contract for the payment of fees to an attorney in connection with proceedings involving review of the terms and conditions of the guardianship, including the question of incompetence, whether or not the ward is successful in such proceeding.

(2) Of a person not competent to refuse psychotropic medication.

(a) If the court appoints a guardian under s. 880.33 (4m) (a), the court shall do all of the following:

- 1. Order the county department responsible for ensuring that the person receives appropriate protective services to review, at least once every 12 months from the date of the appointment, the status of the person and file a written evaluation with the court, the person and the person's guardian. Guardianship and protective services orders for psychotropic medication under ch. 55 shall be reviewed annually. The evaluation shall include a description of facts and circumstances that indicate whether there is a substantial likelihood, based on the person's treatment record, that the person would meet the standard specified under s. 880.07 (1m) (c) if protective services, including psychotropic medication, were withdrawn. The substantial likelihood need not be evidenced by episodes in the person's history that are specified in s. 880.07 (1m) (cm). The evaluation shall also include recommendations for discharge or changes in***

the treatment plan or services, if appropriate.

2. Annually, appoint a guardian ad litem to meet with the person and to review the evaluations under subd. 1. The guardian ad litem shall inform the person and the guardian of all of the following:

a. The person's right to representation by full legal counsel under par. (b).

b. The right to an independent evaluation under par. (d) of the person's need for a guardian for the purpose of consenting to or refusing psychotropic medication and the need for and appropriateness of the current treatment or services.

c. The right to a hearing under par. (e) on the need for a guardian for the purpose of consenting to or refusing protective services, including psychotropic medication, and the need for and appropriateness of the current treatment or services.

(b) The court shall ensure that the person is represented by full legal counsel if requested by the person, the guardian or the guardian ad litem.

(c) The guardian ad litem shall file with the court a written report stating the guardian ad litem's conclusions with respect to all of the following:

1. Whether an independent evaluation should be conducted under par. (d).

2. Whether the person continues to be a proper subject for guardianship under s. 880.33 (4m) (a) and protective services, including psychotropic medication.

3. Whether a change in the treatment plan or protective services, including psychotropic medication, is warranted.

4. Whether the person or the guardian requests a change in status, treatment plan or protective services.

5. Whether a hearing should be held on the continued need for guardianship under s. 880.33 (4m) (a) and protective services, including psychotropic medication.

(d) Following review of the evaluation under par. (a) 1. and the guardian ad litem's report under par. (c), the court shall order an independent evaluation of the person's need for continued guardianship under s. 880.33 (4m) (a) and protective services or the appropriateness of the treatment plan or protective services, if requested by the person,

the guardian or the guardian ad litem or if the court determines that an independent evaluation is necessary.

(e) The court shall order a hearing under this subsection upon request of the person, the guardian, the guardian ad litem or any interested person. The court may hold a hearing under this subsection on its own motion.

(f) The court shall do one of the following after holding a hearing under this subsection or, if no hearing is held, after reviewing the guardian ad litem's report and other information filed with the court:

1. Order continuation of the guardianship under s. 880.33 (4m) (a) and protective services order, without modification. The standard for continuation of protective services, including psychotropic medication, is a substantial likelihood, based on the person's treatment record, that the person would meet the standard specified under s. 880.07 (1m) (c) if protective services, including psychotropic medication, were withdrawn. The substantial likelihood need not be evidenced by episodes in the person's history that are specified in s. 880.07 (1m) (cm).

2. Order continuation of the guardianship under s. 880.33 (4m) (a), with modification of the protective services order.

3. Terminate the guardianship under s. 880.33 (4m) (a) and protective services order.

NOTE: The above additions were proposed so as to make clear any differences in termination procedures for different types of guardianships. It would be a good idea under (1) to specify the termination procedures also for a spendthrift. If they are the same as for an incompetent, then modify (1) to state "(1) Of an incompetent or a spendthrift."

[Note: From 880.27 Settlement of accounts.] Final Accounts.

1. Upon termination of a guardianship, or upon resignation, removal or death of a guardian, such guardian or the guardian's personal representative shall forthwith render the guardian's final account to the court and to the former ward, the successor guardian or the deceased ward's personal representative as the case may be.

2. The guardian of a small estate as Sec. ____ shall not be required to file a final account unless otherwise ordered by the court. Instead, the guardian shall simply list the ward's assets remaining at the time the guardianship is terminated (including at the death of the ward).

3. Upon approval of the account and filing proper receipts the guardian shall be discharged and the guardian's bond released.

[From: 880.28 Summary settlement of small estates.] Summary Settlement of Small Estates. When a ward dies leaving an estate which can be settled summarily under s. 867.01, the court may approve such settlement and distribution by the guardian, without the necessity of appointing a personal representative.

E. REVIEW OF A GUARDIAN'S ACTS

1. Continuing Jurisdiction of Court. The court which appointed the guardian shall have continuing jurisdiction over the guardian.

2. Remedies of Court. Upon the petition of any party, including the ward, and a finding of cause as set forth in subd. ____below the Court may, in its discretion, do any of the following:

- a. Order the guardian to file an inventory or any other report or account required of the guardian;
- b. Require the guardian to reimburse the estate of the ward for losses incurred by the guardians's breach of any duty to the ward;
- c. Impose a financial penalty on the guardian including a denial of compensation requested by the guardian;
- d. Remove the guardian; or
- e. Enter any other order that may be necessary or appropriate to compel the guardian to act in the best interests of the ward or to otherwise carry out the guardian's duties and enforce such order by civil contempt.

3. Cause for Court Action against the Guardian.

- a. Failing to timely file a true, correct and complete required inventory or account;
- b. Fraud, waste or mismanagement regarding the ward's estate;
- c. Inappropriate self-dealing regarding the ward's estate;
- d. Failing to adequately provide for the personal needs of the war out of the available assets of the ward's estate and available public benefits;
- e. Failing to exercise due diligence and reasonable care in assuring that the ward's personal needs are being met in the least restrictive environment consistent

with the ward's needs and functional capacities;

f. Failing to carry out the duties of a guardian as specified in Secs. ____ and ____ of this chapter.

3. Removal of paid guardians. The court may remove a corporate or other paid guardian where new circumstances have arisen indicating that a previously unavailable volunteer guardian is now available to serve, and that the change would be in the ward's best interests.

4. Fees and costs in proceedings involving the guardian.

a. The court may require the guardian to pay personally any costs of proceedings, including costs of service and attorneys fees, or any other penalties the court determines are appropriate.

b. Notwithstanding any finding of incompetence, a ward may retain and contract for the payment of fees to an attorney in connection with proceedings involving the guardian, whether or not the ward is successful in such proceeding.

880.16 When a guardian may be removed. (1) NOMINATION BY MINOR. *When a minor ward has attained the age of 14 years a guardian of the minor ward's person, upon notice as required by the court, may be removed on petition of the ward for the purpose of having another person appointed guardian if it is for the best interest of the ward.*

(2) REMOVAL FOR CAUSE. *When any guardian fails or neglects to discharge the guardian's trust the court may remove the guardian after such notice as the court shall direct to such guardian and all others interested.*

NOTE: *The committee believes, when a guardian is removed for cause, that the ward's estate should not have to pay for his or her removal, but that this should be in the court's discretion.*

(3) CITATION TO GUARDIAN.

(a) A citation to a guardian to appear in circuit court may be served in the manner provided for substituted service for summons in the court if the guardian has absconded or keeps himself or herself concealed so as to avoid personal service or if the guardian is a nonresident of this state or has absented himself or herself therefrom for a period of one year.

(b) Upon filing proof of service and at the time fixed in the citation such court shall consider such matter and take proof and grant such relief as shall be just; and any order or judgment made in said proceedings shall be binding upon such guardian and shall be prima facie evidence of all facts therein recited.

(4) FRAUD AS TO WARD'S ESTATE. Upon complaint made to the circuit court by any guardian or ward, or by any creditor or other person interested in the estate, or by any person having any prospective interest therein, as heir or otherwise, against any person suspected of having concealed, stolen or conveyed away any of the money, goods, effects or instruments in writing belonging to the ward the court may cite and examine such suspected person and proceed with the person as to such charge in the same manner as is provided with respect to persons suspected of concealing or stealing the effects of a deceased person in s. 879.61.

880.192 Fraud, waste, mismanagement. If the circuit court has reason to believe that any guardian within its jurisdiction has filed a false inventory, claims property or permits others to claim and retain property belonging to the estate which he or she represents, is guilty of waste or mismanagement of the estate or is unfit for the proper performance of duties, the court shall appoint a guardian ad litem for any minor or incompetent person interested and shall order the guardian to file the account. If upon the examination of the account the court deems it necessary to proceed further, a time and place for the adjustment and settlement of the account shall be fixed by the court, and at least 10 days' notice shall be given to the guardian ad litem and to all persons interested. If, upon the adjustment of the account, the court is of the opinion that the interests of the estate and of the persons interested require it, the guardian may be removed and another appointed.

880.251 Removal of guardian. If a guardian resides out of this state; neglects to render the account within the time provided by law or the order of the court; neglects to settle the estate according to law or to perform any judgment or order of the court; absconds or becomes insane or otherwise incapable or unsuitable to discharge the trust, the circuit court may remove the guardian and appoint a successor. An order of removal may not be made until the person affected has been notified, under s. 879.67, or, if a resident, such notice as the court deems reasonable, to show cause at a specified time why he or she should not be removed.

NOTE: The committee wanted the statute to allow for a volunteer guardian to serve instead of a corporate guardian, whenever possible.

880.252 Accounts; failure of guardian to file. If a guardian fails to file the guardian's account as required by law or ordered by the court, the court may, upon its own motion or upon the petition of any party interested, issue an order to the sheriff ordering the guardian to show cause before the court why the guardian should not immediately make and file the guardian's reports or accounts. If a guardian fails, neglects or refuses to make and file any report or account after having been cited by the court so to do, or if the guardian fails to appear in court as directed by a citation issued under direction and by authority of the court, the court may, upon its own motion or upon the petition of any interested party, issue a warrant directed to the sheriff ordering that the guardian be brought before the court to show cause why the guardian should not be punished for contempt. If the court finds that the failure, refusal or neglect is wilful or inexcusable, ~~the guardian may be fined not to exceed \$50 or imprisoned not to exceed 10 days or both.~~ court may do one or more of the following:
1. Require the guardian to pay personally any costs of the proceedings to compel filing of

reports, and 2. Deny or reduce the guardian's compensation. 3. In addition, the court may remove the guardian following the procedures under sec. 880.251.

NOTE: The committee wants the court to have at its discretion stronger statutory measures for dealing with a guardian whose failure to act is wilful or inexcusable.

880.253 Formal accounting by guardians. The judge may at any time require an accounting by any guardian at a hearing after notice to all interested persons including sureties on the bond of a guardian. The sureties on a bond of a guardian may once in every 3-year period petition the court for such a hearing.

F. GUARDIAN AD LITEM IN REVIEW

[From: 880.331(5) Duties in reviews]. In any review of a protective placement under s. 55.06 or of a protective service order under s. 55.05, the guardian ad litem shall do all of the following:

- (a) Interview the ward to explain the review procedure, the right to an independent evaluation, the right to counsel and the right to a hearing.
- (b) Provide the information under par. (a) to the ward in writing.
- (c) Secure an additional evaluation of the ward, if necessary.
- (d) Review the annual report and relevant reports on the ward's condition and placement.
- (e) Review the ward's condition, placement and rights with the guardian.
- (f) Provide a summary written report to the court.
- (g) If relevant, report to the court that the ward objects to the finding of continuing incompetency, the present or proposed placement, the position of the guardian or the recommendation of the guardian ad litem as to the best interests of the ward or if there is ambiguity about the ward's position on these matters.
- (h) If relevant, report to the court that the ward requests the appointment of counsel or an adversary hearing.

G. COMPENSATION

1. GUARDIAN

1. In General. Guardians of the Person and Guardians of the Estate shall be entitled to compensation and reimbursement for expenses upon the following terms and conditions.

2. Compensation. Subject to the approval of the court, a guardian shall be entitled to reasonable compensation for the guardian's services. The court shall use the following factors to decide whether guardian compensation is just and reasonable: reasonableness of services; fair market value of services; necessity of services; conflict of interest of the guardian; availability of others to provide the services; amount of ward's estate; need for the services; and hourly rate for the services. The amount of the fees may be determined on an hourly basis or a monthly stipend, or any other basis that the court deems reasonable under the circumstances. The court may, but shall not be required to establish the amount or basis for computing the guardian's fees at the time of initial appointment.

3. Reimbursement of Expenses. The guardian shall be reimbursement of the amount of the guardian's reasonable expenses incurred in the execution of the guardian's trust including necessary compensation paid to attorneys, accountants, brokers and other agents and servants.

4. Court Approval. Court approval must be obtained before payment of fees and expenses to the guardian, but need not be obtained before the charges are incurred.

880.24(1) Compensation allowed from estate; fees and expenses of guardian. Except where otherwise indicated, procedures are similar for both guardianship of the person and of the estate, whether for an incompetent, a spendthrift (only guardian of the estate) or a minor.

NOTE: A DHFS reviewer says this statute is not clear whether a guardian of the person only can charge a fee. This person says a current Dept. legal opinion says you can but a previous one said you can't. Can all guardians be compensated? This should be made clear in the statute. The committee offers the guidelines below:

(a) In general. Every guardian shall be allowed the amount of the guardian's reasonable expenses incurred in the execution of the guardian's trust including necessary compensation paid to attorneys, accountants, brokers and other agents and servants. The guardian shall also have such compensation for the guardian's services as the court, in which the guardian's accounts are settled, deems to be just and reasonable.

(b) The court shall use the following factors to decide whether guardian compensation is just and reasonable: reasonableness of services; fair market value of services; necessity of services; conflict of interest of the guardian; availability of others to provide the services; amount of ward's estate; need for the services; and hourly rate for the services.

(c) Court approval must be obtained before payment of fees and expenses to the guardian, but need not be obtained before the charges are incurred.

(d) The court will decide whether guardian fees should be paid on an hourly basis or in a monthly stipend, or by some other means.

2. GAL

[Note: From 880.331(8)] Guardian ad litem in incompetency cases; compensation.

On order of the court, the guardian ad litem appointed under this chapter shall be allowed reasonable compensation to be paid by the county of venue, unless the court otherwise directs. If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to private attorneys under s. 977.08 (4m)(b). The guardian ad litem shall be paid for performing all duties required of the guardian ad litem under this chapter and for any other acts approved by the court and reasonably necessary to promote the best interests of the ward.

H. VISITATION BY GRANDPARENTS AND STEPPARENTS.

880.155 Visitation by grandparents and stepparents. *(a) In this section, "stepparent" means the surviving spouse of a deceased parent of a minor child, whether or not the surviving spouse has remarried.*

(b) If one or both parents of a minor child is deceased and the minor is in the custody of the surviving parent or any other person, a grandparent or stepparent of the child may petition for visitation privileges with respect to the child, whether or not the person with custody is married. The grandparent or stepparent may file the petition to commence an independent action under this chapter. The court may grant reasonable visitation privileges to the grandparent or stepparent if the surviving parent or other person who has custody of the child has notice of the hearing and if the court determines that it is in the best interest of the child.

(c) Whenever possible, in making a determination under sub. (2), the court shall consider the wishes of the child.

(d) The court may issue any necessary order to enforce a visitation order that is granted under this section, and may from time to time modify such visitation privileges or enforcement order upon a showing of good cause.

(e) This section applies to every minor child in this state whose parent or parents are deceased, regardless of the date of death of the parent or parents.

I. OTHER PROVISIONS

880.29 Delivery of property to foreign guardian. When property of a nonresident ward is in the possession of or due from a guardian or personal representative appointed in this state, the appointing court may order such property delivered to the foreign guardian upon filing a verified petition, accompanied by a copy of his or her appointment and bond, authenticated so as to be

admissible in evidence, and upon 10 days' notice to the resident guardian or personal representative. Such petition shall be denied if granting it shall appear to be against the interests of the ward. The receipt of the foreign guardian for the property so delivered shall be taken and filed with the other papers in the proceeding, and a certified copy thereof shall be sent to the court which appointed such guardian.

880.33(6) All court records pertinent to the finding of incompetency are closed but subject to access as provided in s. 55.06 (17). The fact that a person has been found incompetent is accessible to any person who demonstrates to the custodian of the records a need for that information.

SUBCHAPTER VI

VOLUNTARY PROCEEDINGS; CONSERVATORS

880.31 Voluntary proceedings; conservators. (1) Any adult resident who believes that he or she is unable properly to manage his or her property or income may voluntarily apply to the circuit court of the county of his or her residence for appointment of a conservator of the estate. Upon receipt of the application the court shall fix a time and place for hearing the application and direct to whom and in what manner notice of the hearing shall be given.

(2) At the time of such hearing the applicant shall be personally examined and if the court is satisfied that the applicant desires a conservator and that the fiduciary nominated is suitable, the court may appoint the nominee as conservator and issue letters of conservatorship to the nominee upon the filing of a bond in the amount fixed by the court.

(3) A conservator shall have all the powers and duties of a guardian of the estate of an incompetent person.

(4) Any person whose estate is under conservatorship may apply to the court at any time for termination thereof. Upon such application, the court shall fix a time and place for hearing and direct that 10 days' notice by mail be given to the person's guardian, if any, the conservator and the presumptive heirs of the applicant. Upon such hearing, the court shall, unless it is clearly shown that the applicant is incompetent, remove the conservator and order the property restored to the applicant, or if the applicant so desires and the nominee is suitable, the court may appoint a successor conservator.

(5) If the court shall upon such hearing determine that the person whose estate is administered by a conservator may be incapable of handling his or her estate, the court shall order the conservatorship continued, or if the applicant so desires and the nominee is suitable, the court may appoint a successor conservator.

(6) Appointment of a conservator shall not be evidence of the competency or incompetency of

the person whose estate is being administered.

(7) If an application for conservatorship is filed, the fee prescribed in s. 814.66 (1) (b) shall be paid at the time of the filing of the inventory or other documents setting forth the value of the estate.

(8) The conservator's powers shall cease upon being removed by the court for cause or upon appointment of a guardian for, or death of, the person whose estate is being conserved.

NOTE: The committee says that the current statute is not clear about conservator procedures, and believes placing these procedures in a separate subchapter makes their role more easily followed.

**

NOTE: The committee suggests repeal of the following statute. The age of majority is now 18 instead of 21, and this statute may not have any effect now:

880.32 Notes and mortgages of minor veterans. Notwithstanding any provision of this chapter or any other law to the contrary, any minor who served in the active armed forces of the United States at any time after August 27, 1940, and the husband or wife of such minor may execute in his or her own right, notes or mortgages, the payment of which is guaranteed or insured by the U.S. department of veterans affairs or the federal housing administrator under the servicemen's readjustment act of 1944 or the national housing act or any acts supplementary thereto or amendatory thereof. In connection with such transactions, such minors may sell, release or convey such mortgaged property or any interest therein, and litigate or settle controversies arising therefrom, including the execution of releases, deeds and other necessary papers or instruments. Such notes, mortgages, releases, deeds and other necessary papers or instruments when so executed shall not be subject to avoidance by such minor or the husband or wife of such minor upon either or both of them attaining the age of 18 because of the minority of either or both of them at the time of the execution thereof.

*I think this is
what's left of
the 880
subch.*

880.01

880.01 (intro.) Definitions. For the purpose of this chapter, unless the context otherwise requires:

880.01(9)

(9) "Spendthrift" means a person who because of the use of intoxicants or drugs or of gambling, idleness or debauchery or other wasteful course of conduct is unable to attend to business or thereby is likely to affect the health, life or property of the person or others so as to endanger the support of the person and the person's dependents or expose the public to such support.

880.01(10)

(10) "Ward" means a subject for whom a guardian has been appointed.

880.07(1m)

(1m) (intro.) If the petition under sub. (1) alleges that the person is not competent to refuse psychotropic medication, the petition shall allege all of the following:

880.07(1m)(a)

(a) That the person is likely to respond positively to psychotropic medication.

880.07(1m)(b)

(b) That as a result of the person's failure to take medication the person is unable to provide for his or her care in the community. The person's past history is relevant to determining his or her current inability to provide for his or her care in the community under this paragraph.

880.07(1m)(c)

(c) That unless protective services, including psychotropic medication, are provided the person will incur a substantial probability of physical harm, impairment, injury or debilitation or will present a substantial probability of physical harm to others.

880.07(1m)(cm)

(cm) That the substantial probability of physical harm, impairment, injury or debilitation is evidenced by the person's history of at least 2 episodes, one of which has occurred within the previous 24 months, that indicate a pattern of overt activity, attempts, threats to act or omissions that resulted from the person's failure to participate in treatment, including psychotropic medication, and that resulted in a finding of probable cause for commitment under s. 51.20 (7), a settlement agreement approved by a court under s. 51.20 (8) (bg) or commitment ordered under s. 51.20 (13).

880.07(1m)(d)

(d) That the person has attained the age of 18 years.

880.07(3)

(3) In accordance with s. 6.03 (3), any elector of a municipality may petition the circuit court for a determination that a person residing in such municipality is incapable of understanding the objective of the elective process and thereby ineligible to register to vote or to vote in an election. This determination shall be made by the court in accordance with the procedures set forth in ss. 880.08 (1) and 880.33 for

determining limited incompetency. When a petition is filed under this subsection, the finding of the court shall be limited to a determination as to voting eligibility. The appointment of a guardian or limited guardian is not required for a person whose sole limitation is ineligibility to vote.

880.075

880.075 Time of hearing for certain appointments. A petition for guardianship of a person who has been admitted to a nursing home or a community-based residential facility under s. 50.06 shall be heard within 60 days after it is filed. If an individual under s. 50.06 (3) alleges that an individual is making a health care decision under s. 50.06 (5) (a) that is not in the best interests of the incapacitated individual or if the incapacitated individual verbally objects to or otherwise actively protests the admission, the petition shall be heard as soon as possible within the 60-day period.

880.08(2)

(2) Spendthrifts. Notice shall be served personally upon the proposed spendthrift ward at least 10 days before the time set for hearing but the proposed ward may appear without objecting to the jurisdiction of the court over the proposed ward's person and thereupon the matter may be heard forthwith.

880.155

880.155 Visitation by grandparents and stepparents.

880.155(1)

(1) In this section, "stepparent" means the surviving spouse of a deceased parent of a minor child, whether or not the surviving spouse has remarried.

880.155(2)

(2) If one or both parents of a minor child are deceased and the child is in the custody of the surviving parent or any other person, a grandparent or stepparent of the child may petition for visitation privileges with respect to the child, whether or not the person with custody is married. The grandparent or stepparent may file the petition in a guardianship or temporary guardianship proceeding under this chapter that affects the minor child or may file the petition to commence an independent action under this chapter. Except as provided in sub. (3m), the court may grant reasonable visitation privileges to the grandparent or stepparent if the surviving parent or other person who has custody of the child has notice of the hearing and if the court determines that visitation is in the best interest of the child.

880.155(3)

(3) Whenever possible, in making a determination under sub. (2), the court shall consider the wishes of the child.

880.155(3m)

(3m)

880.155(3m)(a)

(a) Except as provided in par. (b), the court may not grant visitation privileges to a grandparent or stepparent under this section if the grandparent or stepparent has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated.

880.155(3m)(b)

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

880.155(4)

(4) The court may issue any necessary order to enforce a visitation order that is granted under this section, and may from time to time modify such visitation privileges or enforcement order upon a showing of good cause.

880.155(4m)

(4m)

880.155(4m)(a)

(a) If a grandparent or stepparent granted visitation privileges with respect to a child under this section is convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, the court shall modify the visitation order by denying visitation with the child upon petition, motion or order to show cause by a person having custody of the child, or upon the court's own motion, and upon notice to the grandparent or stepparent granted visitation privileges.

880.155(4m)(b)

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

880.155(5)

(5) This section applies to every minor child in this state whose parent or parents are deceased, regardless of the date of death of the parent or parents.

880.157

880.157 Prohibiting visitation or physical placement if a parent kills other parent.

880.157(1)

(1) Except as provided in sub. (2), in an action under this chapter that affects a minor child, a court may not grant to a parent of the child visitation or physical placement rights with the child if the parent has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated.

880.157(2)

(2) Subsection (1) does not apply if the court determines by clear and convincing evidence that visitation or periods of physical placement would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

880.16

880.16 When a guardian may be removed.

880.16(1)

(1) Nomination by minor. When a minor ward has attained the age of 14 years a guardian of the minor ward's person, upon notice as required by the court, may be removed on petition of the ward for the purpose of having another person appointed guardian if it is for the best interest of the ward.

880.16(2)

(2) Removal for cause. When any guardian fails or neglects to discharge the guardian's trust the court may remove the guardian after such notice as the court shall direct to such guardian and all others interested.

880.16(3)

(3) Citation to guardian.

880.16(3)(a)

(a) A citation to a guardian to appear in circuit court may be served in the manner provided for substituted service for summons in the court if the guardian has absconded or keeps himself or herself concealed so as to avoid personal service or if the guardian is a nonresident of this state or has absented himself or herself therefrom for a period of one year.

880.16(3)(b)

(b) Upon filing proof of service and at the time fixed in the citation such court shall consider such matter and take proof and grant such relief as shall be just; and any order or judgment made in said proceedings shall be binding upon such guardian and shall be prima facie evidence of all facts therein recited.

880.16(4)

(4) Fraud as to ward's estate. Upon complaint made to the circuit court by any guardian or ward, or by any creditor or other person interested in the estate, or by any person having any prospective interest therein, as heir or otherwise, against any person suspected of having concealed, stolen or conveyed away any of the money, goods, effects or instruments in writing belonging to the ward the court may cite and examine such suspected person and proceed with the person as to such charge in the same manner as is provided with respect to persons suspected of concealing or stealing the effects of a deceased person in s. 879.61.

880.191(2)

(2) Citation to file inventory and to account. If any guardian neglects to file the inventory or account when required by law, the circuit judge shall call the guardian's attention to the neglect. If the guardian still neglects his or her duty in the premises, the court shall order the guardian to file the inventory and the costs may be adjudged against the guardian.

880.192

880.192 Fraud, waste, mismanagement. If the circuit court has reason to believe that any guardian within its jurisdiction has filed a false inventory, claims property or permits others to claim and retain property belonging to the estate which he or she represents, is guilty of waste or mismanagement of the estate or is unfit for the proper performance of duties, the court shall appoint a guardian ad litem for any minor or incompetent person interested and shall order the guardian to file the account. If upon the examination of the account the court deems it necessary to proceed further, a time and place for the adjustment and settlement of the account shall be fixed by the court, and at least 10 days' notice shall be given to the guardian ad litem and to all persons interested. If, upon the adjustment of the account, the court is of the

opinion that the interests of the estate and of the persons interested require it, the guardian may be removed and another appointed.

880.195

880.195 Transfer of Menominees guardianship funds to trust. The circuit court which has appointed a guardian of the estate of any minor or incompetent who is a member of the Menominee Indian tribe as defined in s. 49.385 or a lawful distributee thereof may direct the guardian to transfer the assets of the minor or incompetent in the guardian's possession to the trustees of the trust created by the secretary of interior or his or her delegate which receives property of the minors or incompetents transferred from the United States or any agency thereof as provided by P.L. 83-399, as amended, and the assets shall thereafter be held, administered and distributed in accordance with the terms and conditions of the trust.

880.215

880.215 Lis pendens, void contracts. A certified copy of the petition and order for hearing provided for in ss. 880.07 and 880.08 may be filed in the office of the register of deeds for the county; and if a guardian shall be appointed upon such application all contracts, except for necessities at reasonable prices, and all gifts, sales and transfers of property made by such insane or incompetent person or spendthrift, after the filing of a certified copy of such petition and order as aforesaid, shall be void. The validity of a contract made by a person under limited guardianship is not void, however, unless the determination is made by the court in its finding under s. 880.33 (3) that the ward is incapable of exercising the power to make contracts.

880.251

880.251 Removal of guardian. If a guardian resides out of this state; neglects to render the account within the time provided by law or the order of the court; neglects to settle the estate according to law or to perform any judgment or order of the court; absconds or becomes insane or otherwise incapable or unsuitable to discharge the trust, the circuit court may remove the guardian and appoint a successor. An order of removal may not be made until the person affected has been notified, under s. 879.67, or, if a resident, such notice as the court deems reasonable, to show cause at a specified time why he or she should not be removed.

880.252

880.252 Accounts; failure of guardian to file. If a guardian fails to file the guardian's account as required by law or ordered by the court, the court may, upon its own motion or upon the petition of any party interested, issue an order to the sheriff ordering the guardian to show cause before the court why the guardian should not immediately make and file the guardian's reports or accounts. If a guardian fails, neglects or refuses to make and file any report or account after having been cited by the court so to do, or if the guardian fails to appear in court as directed by a citation issued under direction and by authority of the court, the court may, upon its own motion or upon the petition of any interested party, issue a warrant directed to the sheriff ordering that the guardian be brought before the court to show cause why the guardian should not be punished for contempt. If the court finds that the failure, refusal or neglect is willful or inexcusable, the guardian may be fined not to exceed \$50 or imprisoned not to exceed 10 days or both.

880.253

880.253 Formal accounting by guardians. The judge may at any time require an accounting by any guardian at a hearing after notice to all interested persons including sureties on the bond of a guardian. The sureties on a bond of a guardian may once in every 3-year period petition the court for such a hearing.

880.26(1)(a)

(a) A minor ward attains his or her majority, unless the minor is incompetent.

880.26(1)(b)

(b) A minor ward lawfully marries.

880.26(2)(a)

(a) A minor ward attains his or her majority.

880.26(2)(b)

(b) A minor ward lawfully marries and the court approves the termination.

880.29

880.29 Delivery of property to foreign guardian. When property of a nonresident ward is in the possession of or due from a guardian or personal representative appointed in this state, the appointing court may order such property delivered to the foreign guardian upon filing a verified petition, accompanied by a copy of his or her appointment and bond, authenticated so as to be admissible in evidence, and upon 10 days' notice to the resident guardian or personal representative. Such petition shall be denied if granting it shall appear to be against the interests of the ward. The receipt of the foreign guardian for the property so delivered shall be taken and filed with the other papers in the proceeding, and a certified copy thereof shall be sent to the court which appointed such guardian.

880.295

880.295 Guardian for mentally ill patient or conservator for county hospital patient or county home resident.

880.295(1)

(1)

880.295(1)(a)

(a) When a patient in any state or county hospital or mental hospital or in any state institution for the mentally deficient, or a resident of the county home or infirmary, appears in need of a guardian, and does not have a guardian, the department of health and family services by its collection and deportation counsel, or the county corporation counsel, may apply to the circuit court of the county in which the patient resided at the time of commitment or to the circuit court of the county in which the facility in which the patient resides is located for the appointment of a guardian of the person and estate, or either, or for the appointment of a conservator of the estate, and the court, upon the application, may appoint the guardian or conservator in the manner provided for the appointment of guardians under ss. 880.08 (1) and 880.33 or for the appointment of conservators under s. 880.31.

880.295(1)(b)

(b) If application is made by a corporation counsel, a copy of the petition made to the court shall be filed with the department of health and family services.

880.295(1)(c)

(c) If application is made by a corporation counsel for appointment of a guardian of the estate of the patient

or resident, or by the patient or resident for appointment of a conservator of the patient's or resident's estate, the court may designate the county as guardian or conservator if the court finds that no relative or friend is available to serve as guardian or conservator and the county is not required to make or file any oath or give any bond or security, except in the discretion of the court making the appointment, as similarly provided under s. 223.03 (6) (a) in the case of the appointment of a trust company bank corporation.

880.295(1)(d)

(d) The court may place any limitations upon the guardianship or conservatorship as it considers to be in the best interest of the patient.

880.295(1)(e)

(e) Before any county employee administers the funds of a person's estate for which the county has been appointed guardian or conservator, the employee must be designated as securities agent in the classified service of the county, and the employee's designation as securities agent shall appear on all court papers that the security agent signs in the name of the county as guardian or conservator. The securities agent, before entering upon the duties, shall also furnish an official bond in the amount and with the sureties that the county board determines, subject to the prior approval of the amount by the court assigned to exercise jurisdiction. The bond shall be filed in the office of the register in probate, and a duplicate original of the bond filed in the office of the county clerk.

880.295(1)(f)

(f) A conservatorship under this section shall be terminated by the court upon discharge of the patient unless application for continued conservatorship is made. The superintendent or director of the facility shall notify the court of the discharge of a patient for whom a guardian or conservator has been appointed under this subsection.

880.295(2)

(2) Any guardian heretofore or hereafter appointed for any such inmate, who, having property of his or her ward in his or her possession or control exceeding \$200 in value, fails to pay within 3 months after receipt of any bill thereof for the ward's care and support from the department of health and family services or the agency established pursuant to s. 46.21, shall, upon application of the collection and deportation counsel of said department or in counties having a population of 500,000 or more, the district attorney, forthwith be removed.

880.32

880.32 Notes and mortgages of minor veterans. Notwithstanding any provision of this chapter or any other law to the contrary, any minor who served in the active armed forces of the United States at any time after August 27, 1940, and the husband or wife of such minor may execute in his or her own right, notes or mortgages, the payment of which is guaranteed or insured by the U.S. department of veterans affairs or the federal housing administrator under the servicemen's readjustment act of 1944 or the national housing act or any acts supplementary thereto or amendatory thereof. In connection with such transactions, such minors may sell, release or convey such mortgaged property and litigate or settle controversies arising therefrom, including the execution of releases, deeds and other necessary papers or instruments. Such notes, mortgages, releases, deeds and other necessary papers or instruments when so executed shall not be subject to avoidance by such minor or the husband or wife of such minor upon either or both of them attaining the

age of 18 because of the minority of either or both of them at the time of the execution thereof.

880.33(2)(d)

(d) The hearing on a petition which contains allegations under s. 880.07 (1m) shall be held within 30 days after the date of filing of the petition, except that if a jury trial demand is filed the hearing shall be held within either 30 days after the date of filing of the petition or 14 days after the date of the demand for a jury trial, whichever is later. A finding by a court under s. 51.67 that there is probable cause to believe that the person is a proper subject for guardianship under s. 880.33 (4m) has the effect of filing a petition under s. 880.07 (1m).

880.33(3)

(3) In a finding of limited incompetency, guardianship of the person shall be limited in accordance with the order of the court accompanying the finding of incompetence. If the proposed incompetent has executed a power of attorney for health care under ch. 155, the court shall give consideration to the appointment of the health care agent for the individual as the individual's guardian. The court shall make a specific finding as to which legal rights the person is competent to exercise. Such rights include but are not limited to the right to vote, to marry, to obtain a motor vehicle operator's license or other state license, to hold or convey property and the right to contract. The findings of incompetence must be based upon clear and convincing evidence. The court shall determine if additional medical or psychological testimony is necessary for the court to make an informed decision respecting competency to exercise legal rights and may obtain assistance in the manner provided in s. 55.06 (8) whether or not protective placement is made. The guardian, ward or any interested person may at any time file a petition with the court requesting a restoration of any such legal right, and specifying the reasons therefor. Such petition may request that a guardianship of the person be terminated and a guardianship of property be established.

880.33(4)

(4) When it appears by clear and convincing evidence that the person is incompetent, the court shall appoint a guardian.

880.33(4m)

(4m)

880.33(4m)(a)

(a) If the court finds by clear and convincing evidence that the person is not competent to refuse psychotropic medication and the allegations under s. 880.07 (1m) are proven, the court shall appoint a guardian to consent to or refuse psychotropic medication on behalf of the person as provided in the court order under par. (b).

880.33(4m)(b)

(b) (intro.) In any case where the court finds that the person is not competent to refuse psychotropic medication under s. 880.07 (1m) and appoints a guardian to consent to or refuse psychotropic medication on behalf of the person, the court shall do all of the following:

880.33(4m)(b)1.

1. Order the appropriate county department under s. 46.23, 51.42 or 51.437 to develop or furnish, to provide to the ward, and to submit to the court, a treatment plan specifying the protective services, including

psychotropic medication as ordered by the treating physician, that the proposed ward should receive.

880.33(4m)(b)2.

2. Review the plan submitted by the county department under subd. 1., and approve, disapprove or modify the plan.

880.33(4m)(b)2m.

2m. If the court modifies the treatment plan under subd. 2., the court shall order the appropriate county department under s. 46.23, 51.42 or 51.437 to provide the modified treatment plan to the ward.

880.33(4m)(b)3.

3. Order protective services under ch. 55.

880.33(4m)(b)4.

4. Order the appropriate county department under s. 46.23, 51.42 or 51.437 to ensure that protective services, including psychotropic medication, are provided under ch. 55, in accordance with the approved treatment plan.

880.33(4r)

(4r) (intro.) If a person substantially fails to comply with the administration of psychotropic medication, if any, ordered under the approved treatment plan under sub. (4m), a court may authorize the person's guardian to consent to forcible administration of psychotropic medication to the person, if all of the following occur before the administration:

880.33(4r)(a)

(a) The corporation counsel of the county or the person's guardian files with the court a joint statement by the guardian and the director or the designee of the director of the treatment facility that is serving the person or a designated staff member of the appropriate county department under s. 46.23, 51.42 or 51.437, stating that the person has substantially failed to comply. The statement shall be sworn to be true and may be based on the information and beliefs of the individuals filing the statement.

880.33(4r)(b)

(b) (intro.) Upon receipt of the joint statement of noncompliance, if the court finds by clear and convincing evidence that the person has substantially failed to comply with the administration of psychotropic medication under the treatment plan, the court may do all of the following:

880.33(4r)(b)1.

1. Authorize the person's guardian to consent to forcible administration by the treatment facility to the person, on an outpatient basis, of psychotropic medication ordered under the treatment plan.

880.33(4r)(b)2.

2. If the guardian consents to forcible administration of psychotropic medication as specified in subd. 1., authorize the sheriff or other law enforcement agency, in the county in which the person is found or in which it is believed that the person may be present, to take charge of and transport the person, for outpatient treatment, to an appropriate treatment facility.

880.33(4r)(c)

(c) If the court authorizes a sheriff or other law enforcement agency to take charge of and transport the person as specified in par. (b) 2., a staff member of the appropriate county department under s. 46.23, 51.42 or 51.437 or of the treatment facility shall, if feasible, accompany the sheriff or other law enforcement agency officer and shall attempt to convince the person to comply voluntarily with the administration of psychotropic medication under the treatment plan.

880.33(6)

(6) All court records pertinent to the finding of incompetency are closed but subject to access as provided in s. 55.06 (17). The fact that a person has been found incompetent is accessible to any person who demonstrates to the custodian of the records a need for that information.

880.33(8)

(8) (intro.) At the time of determination of incompetency under this section, the court may:

880.33(8)(a)

(a) Hear application for the appointment of a conservator or limited guardian of property.

880.33(9)

(9) All the rights and privileges afforded a proposed incompetent under this section shall be given to any person who is alleged to be ineligible to register to vote or to vote in an election by reason that such person is incapable of understanding the objective of the elective process. The determination of the court shall be limited to a finding that the elector is either eligible or ineligible to register to vote or to vote in an election by reason that the person is or is not capable of understanding the objective of the elective process. The determination of the court shall be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925 or 6.93 with the responsibility for determining challenges to registration and voting which may be directed against that elector. The determination may be reviewed as provided in s. 880.34 (4) and (5) and any subsequent determination of the court shall be likewise communicated by the clerk of court.

880.34(2)

(2) The court shall review and may terminate the guardianship of the person of an incompetent upon marriage to any person who is not subject to a guardianship.

880.34(3)

(3) A ward of the age of 18 or over, any interested person on the ward's behalf, or the ward's guardian may petition the court which made such appointment or the court in the ward's county of residence to have the guardian discharged and a new guardian appointed, or to have the guardian of the ward's property designated as a limited guardian.

880.34(6)

(6)

880.34(6)(a)

(a) (intro.) If the court appoints a guardian under s. 880.33 (4m) (a), the court shall do all of the following: